

9 FAM 42.32(d)(4) SPOUSE AND CHILDREN OF CERTAIN FOREIGN MEDICAL GRADUATES

(TL:VISA-48; 10-1-91)

The accompanying spouse and children of a graduate of a foreign medical school or of a person qualified to practice medicine in a foreign state, who has adjusted status as a special immigrant under the provisions of INA 101(a)(27)(H), are classifiable under INA 203(b)(4) as special immigrants described in INA 101(a)(27)(H) if the consular officer has received an approved petition from INS which accords such status and the consular officer is satisfied that the alien is within the class described in INA 101(a)(27)(H).

9 FAM 42.32(d)(4) Related Statutory Provisions 101(a)(27)(H)

(TL:VISA-3; 8-30-87)

(27) The term "special immigrant" means -...

(H) an immigrant and his accompanying spouse and children, who-

(1) has graduated from a medical school and is qualified to practice medicine in a foreign state.

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry.

(TL:VISA-48; 10-1-91)

For the provisions of INA 203(b)(4), see section 9 FAM 42.32(d)(1) Related Statutory Provisions.

(TL:VISA-48; 10-1-91)

For the provisions of INA 204(a)(1)(E)(i), see section 9 FAM 42.32(d)(1) Related Statutory Provisions.

9 FAM 42.32(d)(4) Notes Employment-based Fourth Preference Dependents of Foreign Medical Graduates

9 FAM 42.32(d)(4) N1 Classes of Foreign Medical Graduates Eligible To Adjust Status as Special Immigrants

(TL:VISA-54; 2-28-92)

a. INA 101(a)(27)(H) permits certain alien physicians and the accompanying spouse and children to adjust status as special immigrants without regard to labor certification requirements or the restrictions of INA 245(c) concerning previous unauthorized employment, provided the alien physicians were fully and permanently licensed to practice medicine in a State and practicing medicine in a State on January 9, 1978, had entered the United States as nonimmigrant temporary workers or exchange visitors before January 10, 1978, and have been thereafter continuously in the United States in the practice or study of medicine. It is reasonable to assume that all eligible physician beneficiaries have already taken advantage of this provision. There may, however, still be a few spouses and children who have not yet accompanied the principal to the United States and may still wish to do so.

b. This class, like most other special immigrant classes, is now incorporated in the employment-based fourth preference. As a result, the spouse or child of such an adjustee cannot be issued a derivative special immigrant visa but must be the beneficiary of a petition to accord status under INA 203(a)(27)(H) as an "accompanying" spouse or child, it will be necessary for the resident alien spouse to follow the procedure in section 9 FAM 40.1(a) to confer such status. The petition may be filed by either the principal resident alien or the beneficiary.

9 FAM 42.32(d)(4) N2 Accompanying Spouse and Children

(TL:VISA-54; 2-28-92)

The definition of “accompanying” in 22 CFR 40.1(a) includes a requirement for the issuance of a visa within four months of the adjustment, or registration, of the principal alien. In light of the new requirement for a petition in these cases and the fact that the time required for petition approval may make compliance therewith impossible, the Department will deem that requirement to have been met if the petition is filed within that four-month period.